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Date:

October 21, 2010

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Dear :

This letter responds to a letter dated June 30, 2010, and subsequent correspondence, that was submitted on behalf of Agency by its authorized representative requesting permission under § 42(n)(4) of the Internal Revenue Code and § 1.42-13(b) of the Income Tax Regulations to correct an administrative error relating to an allocation of low income housing credit dollar amounts.

Agency is the subdivision of State responsible for the administration of single family and multifamily housing programs and is designated as the state allocating entity for low-income housing tax credits under § 42. The a Manual, a supplement to the State's a Qualified Allocation Plan (QAP), limited the maximum annual allocation of low-income housing tax credits (LIHTC) to any one project to \$d. The original allocations of tax credits to the a projects were allocated under carryover allocations under § 42(h)(1)(E).

In b, Agency determined that market conditions had led to an inordinate increase in building costs. For a LIHTC projects to remain financially viable, Agency determined that a supplemental allocation of up to \$e was warranted. Using the a QAP underwriting criteria, all the a projects were re-underwritten. Of the a projects, k were eligible for a potential total annual allocation increase of \$f. Ultimately, Forms 8609, Low-Income Housing Credit Allocation and Certification, were used to make supplemental allocations of credits from the c State housing credit ceiling (Ceiling). These supplemental allocations totaled \$g and were allocated among m projects.

Under Agency's standard operating procedures, Agency awards tax credit reservations after an annual allocation cycle under the QAP, enters into carryover allocation agreements, and issues Forms 8609 after the projects are placed in service. Agency processed the supplemental allocation under its standard operating procedures. Adequate controls, however, were not in place to administer the out-of-cycle allocation of supplemental tax credits. This resulted in Forms 8609 issued in c for m projects totaling \$g, which resulted in exceeding State's c Ceiling by \$h.

Agency requests a ruling granting approval to correct the administrative error that resulted in the over allocation of State's c Ceiling by \$h. As required by § 1.42-13(b)(3)(v), Agency agrees to such conditions as the Secretary considers appropriate if the ruling request is granted.

Under § 42(n)(4), state and local housing credit agencies may correct administrative errors and omissions concerning allocations and recordkeeping within a reasonable period of time after their discovery. Section 1.42-13(b)(2) defines an administrative error or omission as a mistake that results in a document that inaccurately reflects the intent of the agency at the time the document is originally completed or, if the mistake affects a taxpayer, a document that inaccurately reflects the intent of the agency and the affected taxpayer at the time the document is originally completed. Section 1.42-13(b)(1), however, provides that an administrative error or omission does not include a misinterpretation of the applicable rules and regulations under § 42.

Under § 1.42-13(b)(3)(iii)(A), a state agency must obtain the Secretary's prior approval to correct an administrative error or omission if the correction is not made before the close of the calendar year of the error or omission and the correction affects the determination of any component of the Ceiling under § 42(h)(3)(C).

It was the intent of Agency to allocate in c among the m projects supplemental credits totaling \$g in order for the m projects to remain financially viable. However, the allocation of the \$g in c credits resulted in an over allocation of State's c Ceiling by \$h. This error did not result from a misinterpretation of the applicable rules and regulations under § 42. Thus, a correctable administrative error occurred in this situation.

Based solely on the representations and the relevant law and regulations set forth above, we conclude as follows:

1. The Agency committed an administrative error when it made a supplemental allocation of credits which resulted in an over allocation of State's c Ceiling by \$h.

2. After Agency discovered that there was an administrative error, Agency attempted to correct the administrative error within a reasonable period of time.

To correct this administrative error, Agency must do the following:

1. Reduce the Agency's j Ceiling by \$n. This amount represents the \$h in over-allocated § 42 credits from State's c Ceiling, plus interest, compounded annually, and rounded to the nearest dollar. The interest is calculated as the average of the annual Federal mid-term rate and the annual Federal long-term rate under § 1274(d)(1) for o, applied to the period from p through j; and

2. Reflect the \$n reduction of Agency's j Ceiling on line 5b of the j Form 8610, Annual Low-Income Housing Credit Agencies Report. Agency should asterisk line 5b and briefly explain at the bottom of the Form 8610 that this line amount reflects the correction required by this letter ruling. When filed, a copy of this letter ruling must also be attached to the j Form 8610.

No opinion is expressed or implied regarding the application of any other provisions of the Code or regulations. Specifically, we express no opinion on whether the m projects qualify for low-income housing tax credits under § 42.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the power of attorney on file with this office, a copy of this letter is being sent to Taxpayer's authorized representative.

Sincerely,

Christopher J. Wilson
Senior Counsel, Branch 5
Office of Associate Chief Counsel
(Passthroughs & Special Industries)

Enclosures (2)
Copy of this letter
Copy for § 6110 purposes